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Failure of Empathy and Justice

When President Obama listed empathy as a valuable trait for a justice during his 2009 search to replace David Souter, the idea drew scorn from some conservatives who saw it as an excuse for being soft. But a Supreme Court ruling this week provides evidence of how useful empathy is, and of how not using it can lead to glaring injustice.

[Connick v. Thompson](#) is about the wrongful conviction of John Thompson for robbery and murder after prosecutors in New Orleans withheld evidence from Mr. Thompson that would have cast serious doubt on his guilt. He spent 18 years in prison and came close to being executed. He was exonerated after a prosecutor fessed up.

After Mr. Thompson sued, a federal trial court found the office liable for failing to train its prosecutors about their constitutional duty to turn over evidence favorable to the defense and awarded Mr. Thompson \$14 million in damages. Now, by a 5-to-4 vote, the conservative majority of the Roberts court has overturned that ruling, saying the office can't be held liable for a sole incident of wrongdoing.

The important thing about empathy that gets overlooked is that it bolsters legal analysis. That is clear in the [dissent](#) by Justice Ruth Bader Ginsburg. Her empathy for Mr. Thompson as a defendant without means or power is affecting. But it is her understanding of the prosecutors' brazen ambition to win the case, at all costs, that is key.

After detailing the "flagrant indifference" of the prosecutors to Mr. Thompson's rights, she makes clear how critically they needed training in their duty to turn over evidence and why "the failure to train amounts to deliberate indifference to the rights" of defendants.

The district attorney, Harry Connick Sr., acknowledged the need for this training but said he had long since "stopped reading law books" so he didn't understand the duty he was supposed to impart. The result, Justice Ginsburg writes, was an office with "one of the worst" records in America for failing to turn over evidence that "never disciplined or fired a single prosecutor" for a violation.

For the majority, Justice Clarence Thomas asserts that Mr. Thompson failed to prove that the office “disregarded a known or obvious consequence” of its inaction. That doesn’t reckon with the “culture of inattention,” as Justice Ginsburg calls it, which made deplorable breaches far too predictable. Justice Ginsburg’s dissent is the more persuasive, focused on the problem at the heart of the case and at the heart of a legal system that too often fails to see defendants, guilty or not, as human beings.